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EXAMINER

BAXTER, JESSICA R

ART UNIT

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3733

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Please find below and/or attached an Office communication concerning this application or proceeding.



## DETAILED ACTION

### *Drawings*

1. The drawings were objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both the bottom and a notch. Coorection is noted and the objection is withdrawn.

### *Claim Objections*

2. Claims 7, 9 and 10 were objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. Correction is noted and the objection is withdrawn.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,716,356 to Biedermann et al.

Biedermann discloses an implant comprising: - a first assembly comprising: a fixing body (104) for a bracing rod (9), said body being arranged to present a reception housing for receiving an anchor screw bead (103), thereby defining a ball joint between the anchor screw

and the fixing body; a positioning ring (111) for interposing between the anchor screw head and the bracing rod; and a second assembly comprising a nut system (10,11) for fastening the bracing rod to the fixing body, the implant being characterized in that - the first assembly has a positioning ring mounted in the fixing body with freedom to move in limited linear displacement (limited by crimping 114, 115) and allowing the body and the anchor screw to rotate freely relative to each other in the absence of the bracing rod and - the second assembly has a nut system adapted on being screwed onto the body to bear against the bracing rod and move the positioning ring in linear manner so that on being tightened it clamps the bracing rod to between said system and the positioning ring and also clamps the anchor screw (102) between the positioning ring (111) and the fixing body (104), and wherein the fixing body has two side branches (108,109) defining a channel between them that opens out on either side of the body in order to receive the bracing rod (FIG. 19 and 20), the side branches having outside walls that are threaded; and the fastening system comprises a nut adapted to be screwed onto the outside threaded walls of the side branches (11), the nut being fitted in its diametral zone with a shoe (10) mounted to rotate freely and designed to come to bear against the bracing rod so that when tightened it clamps said shoe and the positioning ring (Column 6 lines 61-67).

5. Claims 1, 3, 5, 6 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,885,286 to Sherman et al.

Sherman discloses an implant comprising: - a first assembly comprising: a fixing body (12) for a bracing rod, said body being arranged to present a reception housing for receiving an anchor screw bead (23), thereby defining a ball joint between the anchor screw and the fixing body; a positioning ring (13) for interposing between the anchor screw head

and the bracing rod (55); and a second assembly comprising a nut system (14) for fastening the bracing rod to the fixing body, the implant being characterized in that - the first assembly has a positioning ring mounted in the fixing body with freedom to move in limited linear displacement (Column 7 lines 31-42) and allowing the body and the anchor screw to rotate freely relative to each other in the absence of the bracing rod (Column 6 line 60-Column 7 line 10) and - the second assembly has a nut system adapted on being screwed onto the body to bear against the bracing rod and move the positioning ring in linear manner so that on being tightened it clamps the bracing rod to between said system and the positioning ring and also clamps the anchor screw between the positioning ring and the fixing body (FIG. 2); wherein the positioning ring presents a concave surface complementary to the bracing rod and is guided to slide in such a manner that the concave surface defines a portion of the reception channel for receiving the bracing rod so as to ensure that the bracing rod is positioned automatically between the side branches and on the positioning ring; and wherein the positioning ring presents a through opening out between the side walls and over the head of the anchor screw in which there is provided a blind hole suitable for receiving a screw-driver tool passing through the opening (bore 45); wherein the fixing body comprises: a fixing head on which there stand two side branches (31, 32) and in which there is arranged a cavity opening out at one or between the side branches and opening out at its opposite end; - the positioning ring mounted to move with limited displacement inside the cavity with its surface for receiving the bracing rod opening between the two side branches (Column 7 lines 31-63); - the head of the anchor screw mounted at least in part inside the cavity so that the positioning ring is interposed between said head and the body (FIG. 2);

and - a closure cup fixed on the fixing body on its inside face to close the cavity and having the anchor screw passing therethrough (body 30).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 9, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. '356 in view of WO 98/41159 to Alby.

Biedermann discloses the claimed invention except for the shoe being adapted to co-operate with the nut to define on either side of the shoe two gaps. Alby teaches that the shoe may be provided with gaps to allow the shoe to slide between the two branches and to facilitate gripping of the shoe when it is inserted into the assembly. (Page 4, lines 12-22). IT would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shoe of Biedermann with gaps on either side in order to facilitate gripping while the shoe is being inserted into the assembly.

***Response to Arguments***

8. Applicant's arguments filed 15 August 2005 have been fully considered but they are not persuasive.

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9. Applicant argues that Biedermann does not disclose a positioning ring that moves in a linear manner in a limited linear displacement. Biedermann discloses that the member 111 does indeed move linearly in a limited fashion (Column 6 lines 46-48). Therefore, the rejection over Biedermann et al. '356 is proper.

10. Applicant argues that Sherman does not disclose a positioning ring that moves in linear displacement relative to a fixing body by means of a guide peg. This limitation is in claim 4, which was not rejected by Sherman et al. '286. It is not clear the point of applicant's argument since it is acknowledged that this claim is objected to subject matter.

#### ***Allowable Subject Matter***

11. Claim4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3733



jrb



EDUARDO C. ROBERT  
PRIMARY EXAMINER